



STATE OF UTAH INSURANCE DEPARTMENT

REPORT OF FINANCIAL EXAMINATION

of

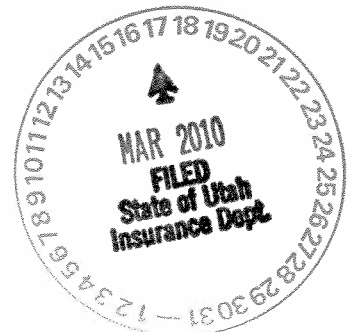
**LANDCAR CASUALTY COMPANY**

of

Sandy, Utah

as of

Exam Date December 31, 2008



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October 9, 2009

**SALUTATION**

Honorable Neil T. Gooch, Acting Insurance, Commissioner  
Utah Insurance Department  
3110 State Office Building  
Salt Lake City, Utah 84114

Honorable Morris J. Chavez, Superintendent  
Secretary, Western Zone, NAIC  
New Mexico Public Regulation Commission  
Division of Insurance  
PO Drawer 1269  
Santa Fe, New Mexico 87504-1269

Honorable Alfred W. Gross, Commissioner  
Chair, Financial Condition (E) Committee, NAIC  
Virginia State Corporation Commission  
Bureau of Insurance  
Commonwealth of Virginia  
PO Box 1157  
Richmond, Virginia 23218

Pursuant to your instructions and in compliance with statutory requirements, an examination, as of December 31, 2008, has been made of the financial condition and business affairs of:

**LANDCAR CASUALTY COMPANY**

Sandy, Utah

hereinafter referred to in this report as the Company, and the following report of examination is respectfully submitted.

## **SCOPE OF EXAMINATION**

### **Period Covered by Examination**

We have performed our association examination of Landcar Casualty Company. This examination covers the period of January 1, 2006 through December 31, 2008.

### **Examination Procedures Employed**

We conducted our examination in accordance with the NAIC Financial Condition Examiners Handbook. The Handbook requires that we plan and perform the examination to evaluate the financial condition and identify prospective risks of the Company by obtaining information about the Company including corporate governance, identifying and assessing inherent risks within the Company and evaluating system controls and procedures used to mitigate those risks. An examination also includes assessing the principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation, management's compliance with Statutory Accounting Principles and annual statement instructions when applicable to domestic state regulations. All accounts and activities of the company were considered in accordance with the risk-focused examination process.

### **Status of Prior Examination Findings**

The last examination was completed as of December 31, 2005. Items of significance noted in the prior examination report were two (2) categories of exception conditions; compliance with annual statement instructions and statutory compliance. The adverse findings not satisfactorily addressed will be identified as repeat exceptions in this report.

A limited scope examination of specific assets, not limited to mortgage loans, common and preferred stocks with exposure to mortgage lending industry deterioration, was conducted as of December 31, 2007. In response to the findings of the examination and to address the Department's concerns, the Company has discontinued investments in new mortgage loans and the Board of Directors formed an investment committee in March 2009 to oversee the Company's investment strategy and policy.

## **SUMMARY OF SIGNIFICANT FINDINGS**

The Company failed to comply with U.C.A. Rule R590-178-5.B which requires the exclusion of securities held in violation of this rule when determining and reporting financial condition of insurers. (ACCOUNTS AND RECORDS)

Prior to the conclusion of the examination, the Company executed custodial agreements which comply with both statute and rule. As a result the Utah Insurance Department waived the requirement that the assets be excluded

The Company failed to comply with U.C.A. § 31A-16-106(1), in part, which requires that transactions within a holding company system meet certain standards. (ACCOUNTS AND RECORDS)

## **SUBSEQUENT EVENTS**

In response to the findings of the limited scope examination of the Company's mortgage portfolio as of December 31, 2007 and to address the Department's concerns, the board of directors formed an investment committee in March 2009 to oversee the Company's investment strategy and policy.

With the adoption of the NAIC Model Audit Rule (MAR) effective January 1, 2010, the Utah Department promulgated the Annual Financial Rule R590-254 effective July 8, 2009. Some of the requirements that would be applicable to the Company would be a five year rotation period of lead (or coordinating) audit partner (having primary responsibility for the audit)..

## **COMPANY HISTORY**

### **General**

The Company was incorporated on October 3, 1989 as Landcar Insurance Company of Colorado. Subsequently, in September, 1995, the Company was re-domesticated to Utah and the name of the Company was changed to Landcar Casualty Company. The Company is licensed to write automobile service contract reimbursement insurance in the states of Utah, New Mexico, Arizona, Texas, Oregon, Colorado and Idaho. In 1998, the Company began assuming guaranteed automobile protection insurance (GAP) from American Bankers Insurance Group. In 2000, the Company terminated the GAP insurance book of business and is now in runoff. In 2004, the Company began writing GAP insurance policies and as of December 31, 2008, was approved to write business in Utah, Colorado, Idaho, Arizona, Oregon, Texas and New Mexico.

### **Dividends and Capital Contributions**

During the period of examination, there were no dividends or capital contributions.

### **Mergers and Acquisitions**

There were no mergers or acquisitions during the period of examination.

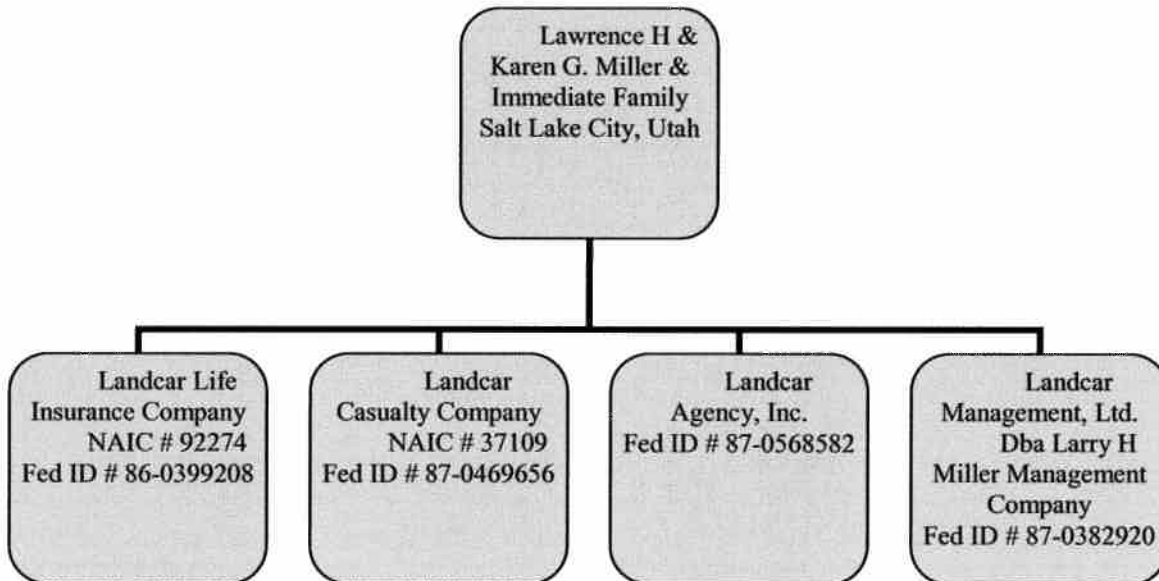
## **CORPORATE RECORDS**

Minutes of meetings of directors were reviewed for compliance and support. The minutes approve and support Company transactions and events. The previous

examination report as of December 31, 2005, was distributed to the board of directors on July 20, 2007.

## **MANAGEMENT & CONTROL INCLUDING CORPORATE GOVERNANCE**

As of December 31, 2008, Lawrence H. Miller and Karen G. Miller and family own the Company. The insurer is a member of an insurance holding company system as described below in the abbreviated organizational chart:



The bylaws of the Company indicated the number of directors must equal the number of shareholders.

The following persons served as directors of the Company as of December 31, 2008:

<b><u>Name and Residence</u></b>	<b><u>Principal Occupation</u></b>
Lawrence H. Miller Salt Lake City, Utah	Secretary – Treasurer Larry H. Miller Group of Companies
Karen G. Miller Salt Lake City, Utah	President Larry H. Miller Group of Companies
Bryan J. Miller South Jordan, Utah	Vice President Larry H. Miller Group of Companies
Gregory S. Miller Sandy, Utah	Senior Vice President Larry H. Miller Group of Companies
Roger L. Miller	Vice President

Draper, Utah

Larry H. Miller Group of Companies

Stephen F. Miller  
Sandy, Utah

Vice President  
Larry H. Miller Group of Companies

Karen R. Williams  
Grantsville, Utah

Vice President  
Larry H. Miller Group of Companies

Officers of the Company as of December 31, 2008, were:

**Name**

**Title**

Karen G. Miller  
Lawrence H. Miller  
Bryan G. Miller  
Gregory S. Miller  
Roger L. Miller  
Stephen F. Miller  
Karen R. Williams

President  
Secretary – Treasurer  
Vice President  
Vice President  
Vice President  
Vice President  
Vice President

As of December 31, 2008, there were no committees of the board of directors. A general manager supervises the operations of the Company.

## **FIDELITY BONDS AND OTHER INSURANCE**

The Company is a named insured under a policy providing \$1,000,000 coverage of losses associated with employee dishonesty. This coverage is in excess of the \$225,000 minimum fidelity coverage suggested by the NAIC.

The Company is also a named insured under other policies providing coverage of losses associated with other risks of doing business.

## **PENSION, STOCK OWNERSHIP AND INSURANCE PLANS**

The Company provides a 401(k) defined contribution plan for eligible employees. All employees of the Company with service of over one year are eligible to participate in the plan. The Company pays an amount equal to 50% of the employee's contribution up to 3% of the employee's salary. The Company's contribution to the plan for the years ended December 31, 2008, 2007, and 2006 was \$1,262, \$1,727 and \$1,452 respectively.

The Larry H. Miller Group of Companies offers a cafeteria plan that allows employees to choose their benefits from a "flexible benefits menu" including health insurance, dental insurance, life insurance, dependent life insurance, short-term disability insurance and reimbursement accounts (Cafeteria-Plan 125 account). A cafeteria plan, as established by the IRS, allows employers to offer an array of benefits to employees on a

pre-tax basis. Full-time employees, who work at least 32 hours per week, are eligible to participate in the group's plans.

## **TERRITORY AND PLAN OF OPERATION**

As of December 31, 2008, the Company was authorized to transact automobile protection insurance business in the states of Arizona, Colorado, Idaho, New Mexico, Oregon, Texas, and Utah. Operations are conducted in all authorized states except the state of Texas.

The Company is a member of the Larry H. Miller Group of Companies which is composed of three divisions:

A Sports and Entertainment Division, which among other things consists of The Utah Jazz NBA franchise and The EnergySolutions Arena;

A Real Estate Division, which consists of several theater complexes and the Jordan Commons office building complex and;

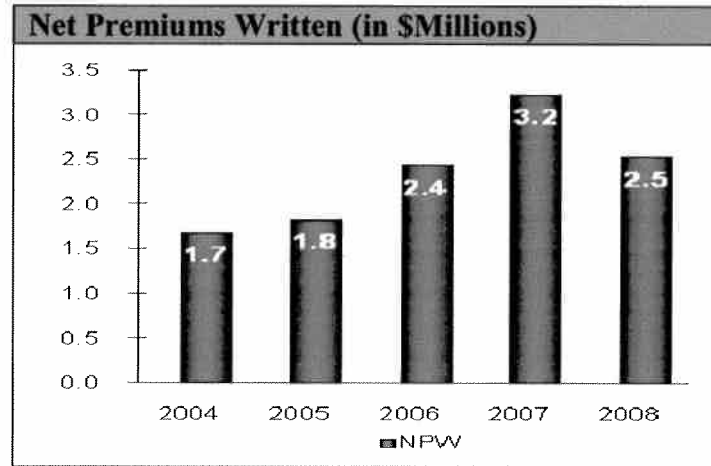
The Automotive Division, which consists of over 40 car dealerships and several ancillary entities, including the Company, that provide goods and services primarily to the car dealerships.

The Company's primary channel of distribution is the Landcar Agency, which markets a guaranteed automobile protection (GAP) product, which provides coverage to pay off any loan balance in excess of the market value of a vehicle in the event of a total loss, and contract service contracts that cover mechanical breakdowns. These products are sold to the public through the car dealerships. As such, the production of new business is dependent upon conditions in the automotive market. With the decline in the economy beginning in 2008, the Company has seen a sharp decline in premiums written.

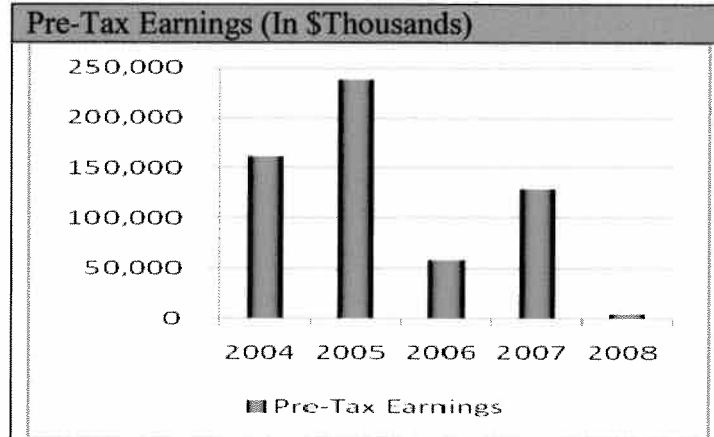


## GROWTH OF COMPANY

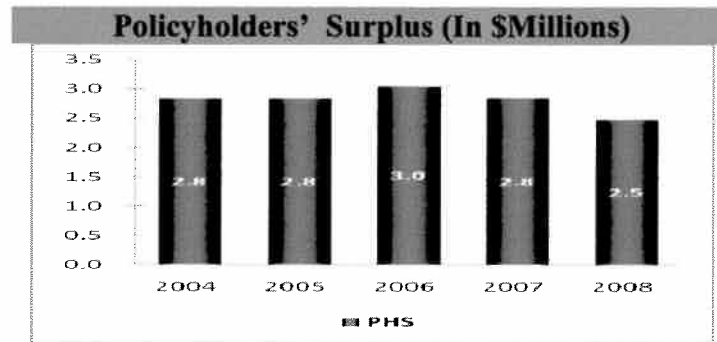
During the period of this examination, the trend for net premiums written has consistently increased with the exception of 2008, which reflected the downturn in the economy beginning in late 2007.



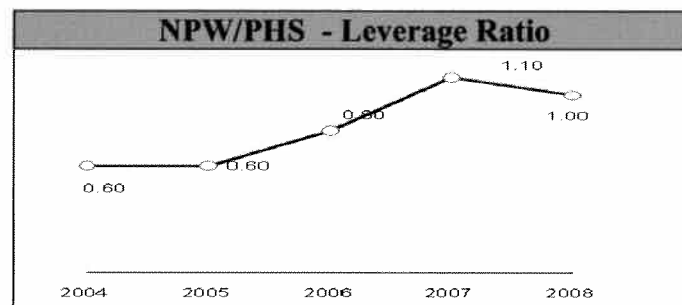
The trend for pre-tax earnings is inconsistent due to poor loss experience on the Company's GAP product.



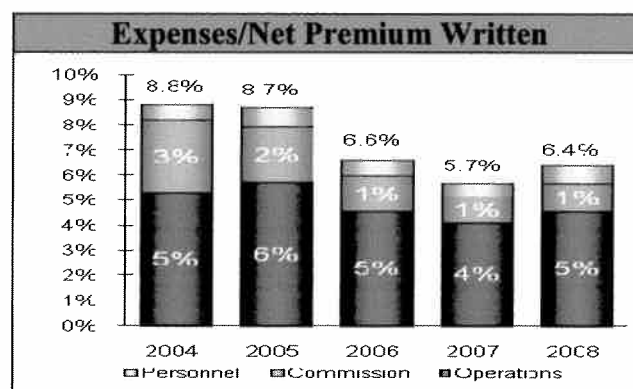
Policyholders' surplus has trended downward due to the poor loss experience; the down turn in the economy and unrealized losses for the Company's investment portfolio.



The ratio of net written premiums to surplus, which reflects the Company's leverage of available capital, is very conservative. The trend of the ratio reflects the downward trend in policyholders' surplus.

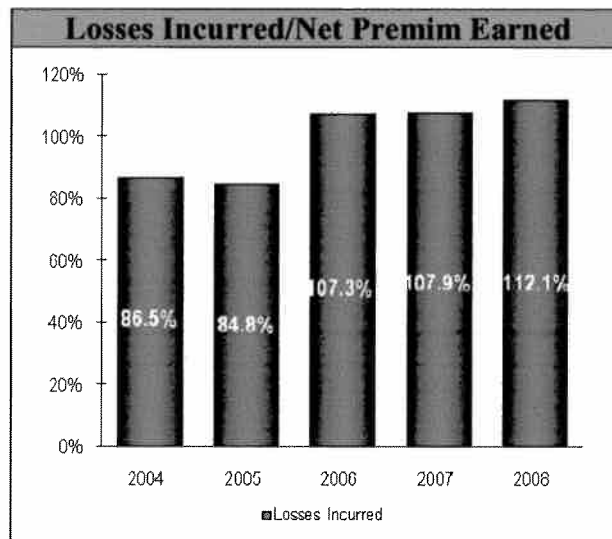


The ratio of commissions to net premiums written is inconsistent due to the GAP product, which is marketed differently depending upon the state where the product is sold. In Oregon, the GAP product is sold as an insurance policy. In the other states the GAP product is sold as a waiver backed by a contractual liability policy. Both are underwritten by the Company, but commission is only paid when the "insurance policy" itself is sold.



## LOSS EXPERIENCE

During the period of this examination, the trend for losses incurred to premiums earned has consistently increased, as shown above, which is due to poor loss experience on the Company's GAP product.



## REINSURANCE

As of December 31, 2008, the Company did not accept or cede reinsurance.

## ACCOUNTS AND RECORDS

The Company's general accounting records consist of an automated general ledger and a policy administration database consisting of historical records for all contracts of insurance and other financial transactions generated by operations. The system provides those reports, hardcopy or electronically, required to adequately account for the business conducted. Our review did not disclose any significant deficiencies in these records, however, we noted areas in which the Company's record-keeping and procedures and controls could be improved. These areas are further discussed in the "Summary of Recommendations" section of this Report.

U.C.A §31A-4-108 (1) requires that insurers hold all investments and deposits of its funds in its own name except securities kept under a custodial agreement or trust arrangement with a bank or certain other qualified institutions. U.A.C. Rule R590-178 provides guidance for standards of control a custodial agreement must meet. As of December 31, 2008, the Company's investments in bonds and stocks were held in accounts with a bank. The custodial agreement with the bank did not contain the required standards of control. U.A.C R590-178-5.B provides: "Custodial securities held in violation of this rule shall be excluded when determining and reporting financial condition of insurers." The Company reported an investment in bonds and stocks of \$14,306,966 which, were held by institutions in violation of the rule. Prior to the conclusion of the examination, the Company negotiated custodial agreements which comply with both the statute and rule. As a result the Utah Insurance Department waived the requirement that the assets be excluded.

U.C.A. § 31A-16-106(1)(a), in part, requires that transactions within a holding company system to which an insurer subject to registration is a party are subject to the following standards:

1. The terms shall be fair and reasonable;
2. Charges or fees for services performed shall be reasonable;
3. Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;
4. The books, accounts, and records of each party to all transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions, including the accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

Furthermore, the NAIC Accounting Practices and Procedures Manual, Statements of Statutory Accounting Principles (SSAP) No. 25, paragraph 16, provides that transactions involving services provided between related parties shall be recorded at the amount charged. Regulatory scrutiny of related party transactions where amounts charged for services do not meet the fair and reasonable standard established by Appendix A-440, may result in:

1. Amounts charged being re-characterized as dividends or capital contributions,
2. Transactions being reversed,
3. Receivable balances being non-admitted, or
4. Other regulatory action.

Expenses that result from cost allocations shall be allocated subject to the same fair and reasonable standards, and the books and records of each party shall disclose clearly and accurately the precise nature and details of the transaction.

During the review of cash disbursements it was determined that certain transactions involving shared expenses and payroll were not sufficiently documented as to allow the examiners to determine whether these transactions were fair and reasonable in accordance with the standards promulgated above.

We recommend that the Company maintain proper and adequate documentation (e.g., time/usage studies) to support that the allocated expenses or fees are fair and reasonable, in accordance with the aforementioned U.C.A. § 31A-16-106(1) and SSAP No. 25.

## STATUTORY DEPOSITS

As of December 31, 2008, the Company maintained a deposit on behalf of the Department , in an amount equal to its minimum capital requirement of \$400,000, as required by U.C.A § 31A-4-105. Deposits maintained in behalf of regulatory agencies as of December 31, 2008 were as follows:

For the benefit of all policyholders:

	<u>Description</u>	<u>Statement Value</u>	<u>Fair Value</u>
Utah:	FHLB	\$750,000	\$752,963
	Utah State Building Owner	944,511	933,147
Not for the benefit of all policyholders:			
New Mexico:	Dallas, Texas Water Works and Sewer	100,000	89,414
	San Antonio, Texas Water Revenue	25,000	21,455
Texas:	FNMA	100,000	103,120
	Total	<u>\$1,919,511</u>	<u>\$1,900,099</u>

## FINANCIAL STATEMENTS

The following financial statements were prepared from the Company's accounting records and the valuations and determination made during the examination. The accompanying NOTE TO FINANCIAL STATEMENTS are an integral part of the financial statements.

LANDCAR CASUALTY COMPANY

**BALANCE SHEET (ASSETS)**

As of December 31, 2008

**ASSETS**

	Net Admitted Assets
Bonds	\$ 4,090,391
Preferred stocks	2,320,330
Common stocks	192,345
Mortgage loans	1,288,202
Cash & short term investments	1,153,848
Total cash & invested assets	9,045,116
Investment income due & accrued	70,124
Premiums uncollected and agent's balances in course of collection	130,365
Other assets	542,727
Assets excluding protected cell accounts	743,216
Protected cell accounts	0
Total Assets	\$ 9,788,332

LANDCAR CASUALTY COMPANY

**BALANCE SHEET (LIABILITIES, SURPLUS AND OTHER FUNDS)**

As of December 31, 2008

**LIABILITIES**

Losses	\$ 960,352
Loss adjustment expenses	31,482
Other expenses	32,382
Taxes, licenses and fees	3,083
Unearned premiums	5,583,376
Amounts withheld or retained by company for account of others	230
Payable to parent, subsidiaries and affiliates	3,014
Supplemental statutory unearned premium reserve	705,325
Total liabilities excluding protected cell liabilities	<u>7,319,244</u>
Protected cell liabilities	<u>0</u>
Total liabilities	<u><u>\$ 7,319,244</u></u>

**SURPLUS AND OTHER FUNDS**

Common capital stock	1,000,000
Gross paid in and contributed surplus	462,000
Surplus notes	1,000,000
Unassigned funds (surplus)	7,088
Surplus as regards policyholders'	<u>2,469,088</u>
Total liabilities, surplus and other funds	<u><u>\$ 9,788,332</u></u>

LANDCAR CASUALTY COMPANY

**STATEMENT OF INCOME**

For the Year Ended December 31, 2008

	<u>Current Year</u>
Premiums earned	\$ 2,358,367
Deductions:	
Losses incurred	2,642,695
Loss adjusting expenses incurred	56,273
Other underwriting expenses incurred	163,677
Total underwriting deductions	<u>2,862,645</u>
Net income of protected cells	<u>0</u>
Net underwriting gain	(504,278)
Net investment income earned	508,136
Net realized gains (losses) less capital gains tax of \$220	<u>646</u>
Net investment gain	508,782
Net income before dividends to policyholders	4,504
Dividends to policyholders	<u>0</u>
Net income after dividends to policyholders, before federal income taxes	4,504
Federal income taxes incurred	<u>15,302</u>
Net income	<u><u>\$ (10,798)</u></u>



# LANDCAR CASUALTY COMPANY

## RECONCILIATION OF CAPITAL AND SURPLUS

2005 through 2008

	2005*	2006*	2007*	Per Exam 2008	Not
Capital and surplus prior reporting year	\$ 2,834,016	\$ 2,835,986	\$ 3,041,875	\$ 2,841,230	
Net income or (loss)	128,852	(18,046)	50,317	(10,798)	
Change in unrealized gains (losses)	(277,354)	177,361	(297,823)	(581,671)	
Change in net deferred income tax	195,862	60,457	217,633	107,067	
Change in nonadmitted assets	(45,390)	(13,883)	21,352	(373,538)	
Change in surplus notes				1,000,000	
Change in supplemental statutory unearned premium reserves			(192,124)	(513,201)	
Net change in capital and surplus	1,970	205,889	(200,645)	(372,141)	
Capital and surplus end of reporting year	\$ 2,835,986	\$ 3,041,875	\$ 2,841,230	\$ 2,469,089	(1

\* Per the regulatory financial statements filed with the Utah Insurance Department.

## NOTE TO FINANCIAL STATEMENTS

(1) Capital and surplus \$2,469,089

The Company's capital and surplus was unchanged from the amount reported in the Company's annual statement as of December 31, 2008.

## SUMMARY OF RECOMMENDATIONS

The examiner must be able to determine whether effective controls are in place and are mitigating identified risks during the examination of the Company. The examiner must review and summarize an understanding of the internal controls or procedures that are in place for all identified inherent risks of the Company and develop control improvement recommendations for management. The internal controls must be assessed by how well they mitigate identified inherent risks. Risk mitigation strategies/controls generally consist of:

1. Management oversight,
2. Policies and procedures,
3. Risk measurement,

4. Control monitoring and
5. Compliance with laws and regulations.

The overall assessment must reflect the examiner's determination as to how well the controls mitigate inherent risk.

The approach to identifying and assessing internal controls involves the comparison of controls to a generally accepted standard or best practice. Best practices relating to the internal controls for insurance companies are included as guidelines in the NAIC Examiners Handbook, which was used during this examination, are based upon the standards promulgated by the Committee of Sponsoring Organization's (COSO) Integrated Framework of Internal Control and the IT Governance Institute's Control Objectives for Information and related Technology (COBIT). Our review of the internal controls in place at the Company indicates that over-all inherent risks for most key activities are mitigated to acceptable levels. However, our review generally revealed the following:

1. The board of directors needs to be more proactive in the development and determination of the policies and procedures of the Company.
2. The comparison of the general controls in place to the standards promulgated by COSO appears to be effective, but the policies and procedures are not formally or adequately documented.
3. Several of the best practices that would be expected for insurance companies are not in place.

It is recommended that the Company initiate a program to formalize and adequately document the Company's general and IT Controls.

## ACKNOWLEDGEMENT

Michael Lamb, FCAS, MAAA, Michael Lamb, LLC., performed the actuarial phases of the examination. Colette M. Hogan Sawyer, CFE, CPM, PIR, Assistant Chief Examiner, and Malis Rasmussen, AFE, PIR, Financial Examiner, participated in the examination. Jan Moenck, CFE, CIE, CRP, Director, and Matt Kasurkin, CISA, RSM McGladrey, Inc., participated in the examination representing the Utah Insurance Department. They join the undersigned in acknowledging the assistance and cooperation extended during the course of the examination by officers, employees, and representatives of the Company.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Leman McLean".

Leman McLean, CFE, Examiner-in-Charge  
RSM McGladrey, Inc.  
Representing the Utah Insurance Department